IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1552 OF 1996

Gopinath Krushnat Deshmane ...Appellant
Vs.
State of Maharashtra ...Respondent

Mr.G.S. Godbole, Advocate for Appellant
Mr.R.S. Khadapkar, A.G.P for State

CORAM: SMT.ROSHAN DALVI,J.
DATED: 7TH JUNE, 2007

P.C.

1. This appeal is filed challenging the rate granted by the learned trial Judge for acquisition of the property of the appellant. The SLAO computed the compensation payable for the appellant's land at Rs.23,660/- at the rate of Rs.6500/- per hector which is equivalent to Rs.65/- per guntha.

2. The appellant has given several instances of sale of the same village Bandegaon as well as of nearby villages. The description of the lands in the instances provided by the appellant are different. Some instances relate to agricultural lands. Some instances relate to lands in residential area

which is built upon.

3. One such instance is of village Hatiz showing the price of Rs.4481/- in respect of the sale deed of 1978, Exhibit-14 on record. The learned Judge has considered the said instance though he has mistakenly concluded that, that is from village Vairag. That sale is in respect of a Gram Panchayat land. It is, therefore, not similar to the suit land which is shown as agricultural land in the 7 x 12 extracts and need not be further considered.

4. The Appellant has given a sale instance of the same village, Exhibit-15 on record. That instance is dated 26th April, 1976 about 4 years prior to the date of the notification in this case. That instance is of sale of 1.45 gunthas of the land at Rs.900/- . Consequently a rate of Rs.675/- in the same village is shown for the instance of sale 4 years prior to the date of the notification. That instance is with regard to the house property on an open plot. The suit land is on the outskirts of the village gaonthan. Consequently the potentiality for housing is seen by the learned Judge in the impugned judgment. The learned Judge has granted a rate of Rs.450/- per gunta as against Rs.65/- of the S.L.A.O considering the actual 7 x 12 extracts showing agricultural land and the potentiality of the property.

5. The instance of the sale of the same village is of house property. That is clearly a nonagricultural land. The rate of Rs.675/- for such nonagricultural land cannot therefore, apply to the applicant's land. A lesser rate at the time of sale four years prior to notification would therefore, be the proper rate for the suit property. The rate of Rs.450/- taken by the learned Judge would be the correct rate in 1995.

6. However, some escalation in price for the next 4 years is required to be granted. Hence, the rate of Rs.986/- for the suit property would be a just and reasonable rate of appreciation considering the instance of sale of the same village. The appellant's Advocate contended that the instance of sale of the adjoining village Saroli showing the property having been sold at the rate of Rs.1,728/- be considered. However, that is a small plot and an open plot having common walls. That property is therefore, not similar to the appellant's property. The rate of the property in an adjoining village need not be considered when the instances of sale of the same village is proved.

7. Upon the rate of Rs.986/- fixed for the suit plot of land considering the potentiality of the land and for the 4 years after the sale instances shown by the appellant, the

development cost of 1/4th of its value would have to be deducted. Hence, the rate of Rs.739/- would be the actual rate payable to the appellant. The Appeal is allowed to that extent.

(SMT. ROSHAN DALVI, J.)